

CHAPTER 803

ZONING ORDINANCE: PRE-EXISTING NONCONFORMING USES

803-1. Nonconforming Uses of Land and/or Structures

The uses of land and/or structures that were both in existence and in compliance with all land use and other laws on the date of passage of these regulations, and, further, that do not conform to the use regulations set forth in this ordinance, shall be deemed to be legal, pre-existing nonconforming uses that may be continued subject to the following provisions:

- (A) No legal, pre-existing nonconforming use of land and/or structure may be enlarged, moved or otherwise changed, except that such use may be changed to permitted use, unless a variance from the terms of the ordinance is obtained from the Board.
- (B) A legal, pre-existing nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use but shall not be expanded to occupy any parts of such building that were not so arranged or designed or any land outside such building.
- (C) Any land, structure, or land and structure in combination, on or in which a legal, pre-existing nonconforming use is superseded by a permitted use, may thereafter only be put to a permitted use and the nonconforming use may not thereafter be resumed.
- (D) When a legal, pre-existing nonconforming use of land, structure, or land and structure in combination, is discontinued or abandoned for six (6) consecutive months, the land, structure, or land and structure in combination, may thereafter only be put to a permitted use and the nonconforming use may not thereafter be resumed.
- (E) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
- (F) Normal maintenance and repair of a building or other structure containing a nonconforming use may be performed, provided there is no physical change to the building or structure (e.g., design, size, location, etc.) and such maintenance or repair does not extend or intensify the nonconforming use, unless otherwise authorized by this chapter.
- (G) Subsections (A), (B), and (F) above, and Section 803-2 of this chapter notwithstanding, structures which are used solely for residential purposes and which are located in industrial districts may be enlarged, for residential purposes, provided the number of dwelling units is not increased, the floor areas of each dwelling unit is not increased more than twenty-five percent (25%), and compliance with all development standards of this ordinance is demonstrated (note: if a residential structure is enlarged pursuant to this subsection, it is not eligible for conditional use approval under Chapter 813 of these regulations).
- (H) Any legal, pre-existing nonconforming use shall continue until or unless modified or terminated as herein provided. Such use may be sold, inherited, or otherwise transferred, provided the use, land and structure (if any) remain the same.

- (I) These provisions apply in the same manner to a use which may become a nonconforming use as a result of an amendment to this ordinance.

803-2. Nonconforming Parcels and/or Structures

Parcels or structures that were both in existence and in compliance with all land use and other laws on the date of passage of this ordinance, and, further, that do not conform to the height, bulk, area and density regulations set forth in this ordinance, shall be deemed to be legal, pre-existing nonconforming parcels or structures that may be occupied or used subject to the following provisions:

- (A) The use is a permitted use or a legal, pre-existing nonconforming use.
- (B) The legal, pre-existing nonconforming parcel may not be further developed until compliance with the ordinance is demonstrated or until a variance from the terms of the ordinance is obtained from the Board.
- (C) Except as permitted in section 803-2(I) below, the legal, pre-existing nonconforming structure may not be expanded, enlarged or otherwise altered until compliance with the ordinance is demonstrated or until a variance from the terms of the ordinance is obtained from the Board.
- (D) Any legal, pre-existing nonconforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before, if such reconstruction is undertaken within eighteen months of such casualty, and if the restored structure has no greater coverage and contains no greater content (measured in cubic feet) than before such casualty.
- (E) Normal maintenance and repair of a legal, pre-existing nonconforming structure may be performed, provided there is no significant physical change to the structure (e.g., design, size, location, etc.) and such maintenance and repair does not extend, enlarge or intensify the nonconforming structure or the use of the nonconforming structure, unless otherwise authorized by this chapter.
- (F) Nothing herein contained shall require any change in the design or construction of a structure for which an improvement location permit has been issued prior to the date of passage of this Ordinance and on which construction will begin within sixty (60) days after the date of the permit and on which construction is diligently prosecuted to completion within one (1) year after the date of the permit.
- (G) Any legal, pre-existing nonconforming dwelling that is deficient in ground floor area and that is removed from a parcel may not be relocated on the parcel or be replaced by any other dwelling which is not in compliance with the requirements of this ordinance.
- (H) These provisions apply in the same manner to a use which may become a nonconforming use as a result of an amendment to this ordinance.
- (I) In areas outside the former City of Bloomington planning and zoning jurisdictional area as described 833-1, a legal, pre-existing nonconforming dwelling may be enlarged if the following criteria are met:
 - (1) If the nonconforming dwelling is served by a private sewage disposal

system, approval by the Monroe County Health Department that the current septic system can accommodate the increased usage created by the expansion.

- (2) The expansion may not increase the gross floor area of the dwelling unit by more than 25 percent calculated from the gross floor area that existed on January 1, 1997. However, if the nonconforming dwelling is a mobile home, it may be replaced by another mobile home without regard to the 25 percent increase in gross floor area; and
- (3) The expansion must meet the setbacks for the zoning district. If the dwelling intrudes into a setback, the expansion shall not increase the encroachment into the setback.

803-3. Burden of Establishing Status

The burden of establishing legal, pre-existing nonconforming use status rests on: the property owner or party seeking to continue the nonconforming use or occupancy; any person applying for an improvement location permit or land use certificate; or, any other person asserting such status. Such persons shall provide sufficient proof in a form acceptable to the Administrator of the following:

- (A) the date of construction of the building or structure or the date the use was established;
- (B) the continuous operation of the nonconforming use; and,
- (C) such other proof and may be deemed necessary by the Administrator.

[end of chapter]